

EXHIBIT B

CAUSE NO. 19-JSC31-01153

ARTHUR C. SOLOMON,

Plaintiff,

v.

DAVITA, INC.,

Defendant.

§ IN THE JUSTICE COURT

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§ PRECINCT 3

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§ FORT BEND COUNTY, TEXAS

DEFENDANT'S NOTICE OF REMOVAL

Please take notice that Defendant DaVita, Inc. has filed a Notice of Removal of this action with the United States District Court for the Southern District of Texas – Houston Division. A copy of the Notice of Removal filed in the United States District Court is attached hereto as Exhibit A.

Respectfully submitted,

/s/ Tiffany Cox Stacy

Tiffany Cox Stacy

Texas State Bar No. 24050734

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

tiffany.cox@ogletree.com

2700 Weston Centre

112 East Pecan Street

San Antonio, TX 78205

210-354-1300 (phone)

210-277-2702 (fax)

ATTORNEYS FOR DEFENDANT
DAVITA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2019, a true and correct copy of the foregoing document was served by certified mail, return receipt requested, on the following:

Arthur C. Solomon
32819 Wesleyan Court
Weston Lakes, Texas 77441

/s/ Tiffany Cox Stacy
Tiffany Cox Stacy

38430287.1
020813.000358

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ARTHUR C. SOLOMON,

Plaintiff,

v.

DAVITA, INC.,

Defendant.

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CIVIL ACTION NO. 4:19-CV-1680

DEFENDANT’S NOTICE OF REMOVAL

COMES NOW Defendant DaVita, Inc. (“DaVita” or “Defendant”) hereby notices the removal of this action pursuant to 28 U.S.C. §§ 1331, 1441, and 1446 to the United States District Court for the Southern District of Texas, and as grounds therefore states:

I. TIMELINESS OF REMOVAL

On or about April 5, 2019, Plaintiff Arthur C. Solomon (“Plaintiff”) filed a civil action against Defendant in the Justice Court, Precinct 3, of Fort Bend County, Texas, Case No. 19-JSC31-01153. Defendant’s registered agent was served with the Statement of Claim on April 8, 2019. Accordingly, Defendant is timely filing this Notice of Removal within 30 days after service of process, as required by 28 U.S.C. § 1446(b). Defendant filed its answer in the Justice Court on April 19, 2019.

Pursuant to Local Rule 81, this Notice of Removal is accompanied by: (1) all executed process in the case; (2) all pleadings asserting causes of action and Defendant’s Answer; (3) the state court docket sheet; (4) an index of matters being filed; and (5) a list of all counsel of record, including addresses, telephone numbers, and parties represented, collectively attached hereto as Exhibit A.

II. VENUE

The Justice Court, Precinct 3, of Fort Bend County, Texas, is located within the Houston Division of the Southern District of Texas. 28 U.S.C. § 124(b)(2). Therefore, venue is proper in this Court because it is the “district and division embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

III. JURISDICTION BASED ON FEDERAL QUESTION

This action is properly removable under 28 U.S.C. § 1441(a) because the United States District Court has original jurisdiction pursuant to 28 U.S.C. § 1331, which provides that “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” Plaintiff’s claims against DaVita are completely preempted by ERISA, which provides the basis for Defendant’s instant removal.

Specifically, in Plaintiff’s Statement of Claim, Plaintiff alleges as follows: “DaVita provided me erroneous information regarding COBRA insurance when my employment with them terminated. This resulted in me purchasing useless health insurance from them, which caused me to be personally liable in paying several thousand dollars to my wife’s healthcare providers.” Given Plaintiff’s allegations, this Court has original jurisdiction of this action under the provisions of ERISA as the “COBRA benefits” and “health insurance” referred to in Plaintiff’s Statement of Claim relate to and are dependent upon DaVita’s employee welfare benefit plan governed by ERISA (the “Plan”).

ERISA’s civil enforcement provision, section 502, completely preempts state causes of action that deal with that section’s subject matter. 29 U.S.C. § 1132. Section 502 allows a plan beneficiary to bring suit: (1) “to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the

terms of the plan,” 29 U.S.C. § 1132(a)(1)(B), or (2) “to enjoin any act or practice which violates any provision of this title or the terms of the plan ... [or] obtain other appropriate equitable relief to redress such violations or to enforce any provisions of this title or the terms of the plan,” 29 U.S.C. § 1132(a)(3). “Put simply, there is complete preemption jurisdiction over a claim that seeks relief ‘within the scope of the civil enforcement provisions of § 502(a).’” *Arana v. Ochsner Health Plan*, 338 F.3d 433, 440 (5th Cir. 2003) (en banc) (quoting *Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 66 (1987)). A defendant may remove such claims to federal court. *Giles*, 172 F.3d at 337. The Fifth Circuit has held that ERISA preempts a state claim if that claim “would cease to exist” if stripped of its link to the ERISA plan at issue. *Rokohl v. Texaco, Inc.*, 77 F.3d 126, 129 (5th Cir. 1996).

While Plaintiff does not specify his exact legal claim, the Fifth Circuit has consistently held that any of the state law claims Plaintiff could conceivably assert in this matter, such as state law claims for breach of contract, violations of the Texas Deceptive Trade Practice Act and the Texas Insurance Code, fraud and fraudulent inducement, and breach of fiduciary duty, to be all preempted by ERISA. *Kellebrew v. UNUM Life Ins. Co. of Am.*, No. CIV.A. H-06-0275, 2006 WL 1050664, at *2 (S.D. Tex. Apr. 20, 2006). Accordingly, this Court has original jurisdiction of this action under the provisions of ERISA, such that this case is properly removable under 28 U.S.C. § 1441(a).

IV. CONCLUSION

In accordance with 28 U.S.C. § 1466, copies of this Notice of Removal will be promptly served Plaintiff, who is proceeding *pro se*, and filed with the Clerk of the Justice Court, Precinct 3, of Fort Bend County, Texas. A copy of Defendant’s notice of filing to the state court is attached hereto as Exhibit B.

WHEREFORE, Defendant respectfully requests that this Court take jurisdiction of this action and issue all necessary orders and process to remove it from the Justice Court, Precinct 3, of Fort Bend County, Texas to the United States District Court for the Southern District of Texas – Houston Division.

Respectfully submitted,

/s/ Tiffany Cox Stacy
Tiffany Cox Stacy
Texas State Bar No. 24050734
Fed I.D. No. 828425
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
2700 Weston Centre
112 East Pecan Street
San Antonio, TX 78205
210-354-1300
210-277-2702 (Fax)
tiffany.cox@ogletree.com

ATTORNEYS FOR DEFENDANT
DAVITA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and I have mailed a true and correct copy of the foregoing document by certified mail, return receipt requested, to the following:

Arthur C. Solomon
32819 Wesleyan Court
Weston Lakes, Texas 77441
artsolomon530@gmail.com

/s/Tiffany Cox Stacy
Tiffany Cox Stacy

38430767.1
020813.000358

EXHIBIT A



SMALL CLAIMS CITATION

Honorable Kelly N. Crow
Justice of the Peace, Pct 3
22333 Grand Corner Dr. Suite 102
Katy TX 77494

COURT COPY

Case No. 19-JSC31-01153

Arthur C Solomon

In the Justice Court

Vs.

Precinct 3

Davita

Fort Bend County Texas

TO: ANY SHERIFF, CONSTABLE OR OTHER PERSON AUTHORIZED BY LAW, OR ANY PERSON CERTIFIED UNDER ORDER OF THE TEXAS SUPREME COURT:

Deliver this citation to:

Davita
By Serving
Corporation Services Company
1900 W Littleton Blvd
Littleton CO 80120

The State of Texas to Davita, Defendant, in the hereinafter-styled and numbered cause:

You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation.

This citation is issued pursuant to a petition filed by the above-named plaintiff on April 05, 2019. The plaintiff's attorney name and address, or the plaintiff's address, if they have no attorney, are:

Plaintiff's Name & Address

Arthur C Solomon
32819 Wesleyan Court
Weston Lakes TX 77441

Issued and given under my hand on 4/5/2019

Honorable Kelly N Crow
Fort Bend County, Texas

By:

Jacqueline A. Garcia, Justice Court Deputy

OFFICER'S RETURN

Came to hand on the _____ day of _____ 20____, at _____
o'clock __.M. and executed within said County _____ on the _____ day of _____
_____ 20____, at _____ o'clock __.m., by delivering to the within named _____
_____ * at _____
_____ in person, a true copy of this Citation,
having first endorsed thereon the date of delivery.

FEES: Serving Citation \$ _____
Mileage \$ _____
Total \$ _____

Deputy

CONSTABLE
Precinct _____

_____, Texas

*State the date and hour of service of each defendant, and where served.

CERTIFICATE OF DELIVERY

I hereby certify that I delivered to the _____ on the _____
_____ day of _____ 20____, at _____ o'clock __.m.,
this copy of this instrument

By: _____
_____ County, Texas

DEFENDANT COPY



SMALL CLAIMS CITATION

Honorable Kelly N. Crow
Justice of the Peace, Pct 3
22333 Grand Corner Dr. Suite 102
Katy TX 77494

Case No. 19-JSC31-01153

Arthur C Solomon

In the Justice Court

Vs.

Precinct 3

Davita

Fort Bend County Texas

TO: ANY SHERIFF, CONSTABLE OR OTHER PERSON AUTHORIZED BY LAW, OR ANY PERSON CERTIFIED UNDER ORDER OF THE TEXAS SUPREME COURT:

Deliver this citation to:

Davita
By Serving
Corporation Services Company
1900 W Littleton Blvd
Littleton CO 80120

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You have been sued. You may employ an attorney to help you in defending against this lawsuit. But you are not required to employ an attorney. You or your attorney must file an answer with the court. Your answer is due by the end of the 14th day after the day you were served with these papers. If the 14th day is a Saturday, Sunday or legal holiday, your answer is due by the end of the first day following the 14th day that is not a Saturday, Sunday or legal holiday. Do not ignore these papers. If you do not file an answer by the due date, a default judgment may be taken against you. For further information, consult Part V of the Texas Rules of Civil Procedure, which is available online and also at the court listed on this citation.

This citation is issued pursuant to a petition filed by the above-named plaintiff on April 05, 2019. The plaintiff's attorney name and address, or the plaintiff's address, if they have no attorney, are:

Plaintiff's Name & Address

Arthur C Solomon
32819 Wesleyan Court
Weston Lakes TX 77441

Issued and given under my hand on 4/5/2019

Honorable Kelly N Crow
Fort Bend County, Texas

By: 

Jacqueline A. Garcia, Justice Court Deputy



KELLY N. CROW

Justice of the Peace, Precinct 2
Fort Bend County, Texas
22333 Grand Corner Dr., Suite
Katy, Texas 77494

OFFICIAL BUSINESS

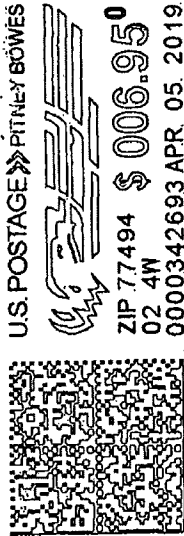
Penalty for Private Use

CERTIFIED MAIL™



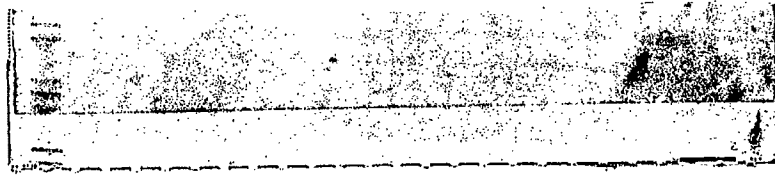
7013 3020 0001 1489 5965

POST OFFICE BOX 19



DAVITA
C/O CORPORATION SERVICES COMPANY
1900 W. LITTLETON BLVD
LITTLETON, CO 80120

5012032023 0002



PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD AT DOTTED LINE



Case No. 19-JSC31-01153

Arthur C. Solomon

Plaintiff(s)

DaVita, Inc.

vs

Defendant(s)

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In the Justice Court

Precinct 3 Place

Fort Bend County

State of Texas

STATEMENT of CLAIM

NOW COMES the above named Plaintiff(s), being duly sworn on oath, deposes and says that the above named Defendant(s), who can be notified and/or served with citation at the following address:

1st Defendant Information:Check one: ☐ 2nd Defendant or ☒ Registered Agent

DaVita, Inc.

Corporation Services Company

Name

2000 16th st.

Name

1900 W. Littleton Blvd.

Address

Denver, CO 80202

Address

Littleton, CO 80120

City

State

Zip Code

City

State

Zip Code

Defendant(s) is/are justly indebted to Plaintiff(s) in the sum of \$ 10,000, and/or return of personal property as described as follows (be specific): Insurance premiums paid of \$7,542.66 plus numerous medical claims, which has a value of \$ Over \$10,000 for the following reason(s):

DaVita provided me erroneous information regarding COBRA insurance when my employment with them terminated.

This resulted in me purchasing useless health insurance coverage from them, which caused me to be personally liable for paying several thousand dollars to my wife's healthcare providers.

AND there are no counterclaims existing in favor of Defendant(s) against Plaintiff(s) except:

NONE

☒ If you wish to give your consent for the answer and any other motions or pleadings to be sent to your email address, please check this box, and provide your valid email address: ARTSOLOMON530@gmail.com

X

Signature of Plaintiff, Plaintiff's authorized agent,

or

Signature of Plaintiff's Attorney (if applicable)
Bar Card #

(Check one) Serve all notices to ☒ Plaintiff, ☐ Registered Agent or ☐ Attorney for Plaintiff, at the following address:

Arthur C Solomon

Name

32819 Wesleyan Court

Address

Weston Lakes, TX 77441

City

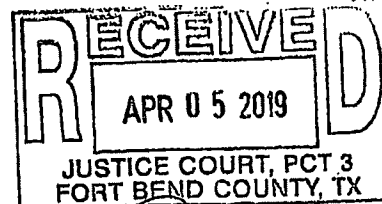
817-659-6006

State

Zip Code

Phone

FAX



SWORN to and SUBSCRIBED before me this 5th day of April, 2019.



JACQUELINE GARCIA
CASE MANAGER
FT. BEND CO. PCT. 3

Notary or Clerk of Court

Case No. 19-JSC31-01153

In the Justice Court, Precinct 3, Fort Bend County, Texas

Arthur C Solomon
Plaintiff

VS

Defendant

AFFIDAVIT OF MILITARY STATUS OF DEFENDANT(S)

Before me, the undersigned authority, on this day personally appeared:

Who, under penalty of perjury (fine and/or up to one year in jail), state the following:

My name is Arthur C Solomon

I am ☒ the plaintiff or ☐ Attorney of record or authorized agent of the plaintiff.
I am capable of making this affidavit. The facts stated in the affidavit are within
my personal knowledge and are true and correct.

(check one)

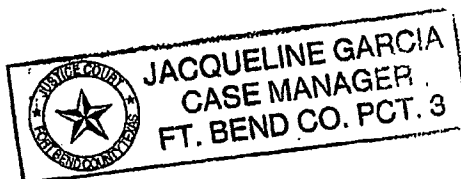
☒ Defendant is not in the military.

☐ Defendant is in the military service, I know this because _____

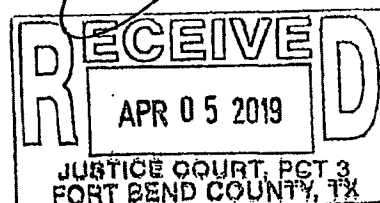
☐ I am unable to determine whether or not the Defendant is in military service.

Arthur C Solomon
Plaintiff Signature/Attorney or Agent for Plaintiff

SWORN TO and SUBSCRIBED before me on this 5th day of April, 2019



[Signature]
Notary Public in and for the State of Texas
Or Clerk of the Justice Court



JUSTICE COURT CIVIL CASE INFORMATION SHEET (4/13)

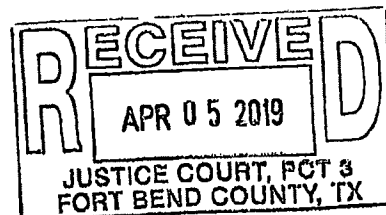
CAUSE NUMBER (FOR CLERK USE ONLY): 19-JSC31-01153

STYLED

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition is filed to initiate a new suit. The information should be the best available at the time of filing. This sheet, required by Rule of Civil Procedure 502, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet:		2. Names of parties in case:
Name: Arthur C. Solomon	Telephone: 817-659-6006	Plaintiff(s): Arthur C. Solomon
Address: 32819 Wesleyan Court	Fax:	
City/State/Zip: Weston Lakes, TX 77441	State Bar No:	Defendant(s): DaVita, Inc.
Email: artsolomon530@gmail.com		
Signature:		[Attach additional page as necessary to list all parties]
3. Indicate case type, or identify the most important issue in the case (select only 1):		
<input type="checkbox"/> Debt Claim: A debt claim case is a lawsuit brought to recover a debt by an assignee of a claim, a debt collector or collection agency, a financial institution, or a person or entity primarily engaged in the business of lending money at interest. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	<input type="checkbox"/> Eviction: An eviction case is a lawsuit brought to recover possession of real property, often by a landlord against a tenant. A claim for rent may be joined with an eviction case if the amount of rent due and unpaid is not more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	
<input type="checkbox"/> Repair and Remedy: A repair and remedy case is a lawsuit filed by a residential tenant under Chapter 92, Subchapter B of the Texas Property Code to enforce the landlord's duty to repair or remedy a condition materially affecting the physical health or safety of an ordinary tenant. The relief sought can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	<input checked="" type="checkbox"/> Small Claims: A small claims case is a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law. The claim can be for no more than \$10,000, excluding statutory interest and court costs but including attorney fees, if any.	



Respectfully submitted,

/s/ Tiffany Cox Stacy

Tiffany Cox Stacy
Texas State Bar No. 24050734
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
tiffany.cox@ogletree.com
2700 Weston Centre
112 East Pecan Street
San Antonio, TX 78205
210-354-1300 (phone)
210-277-2702 (fax)

ATTORNEYS FOR DEFENDANT
DAVITA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of April, 2019, I electronically filed the foregoing document with the court and a true and correct copy was served electronically and by Certified Mail, Return Receipt Requested to:

Arthur C. Solomon
32819 Wesleyan Court
Weston Lakes, Texas 77441
artsolomon530@gmail.com

/s/ Tiffany Cox Stacy

Tiffany Cox Stacy

38232077.1
000007.117000

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New Civil Search](#) [Refine Search](#) [Back](#)
Location : Fort Bend [Images](#) [Help](#)**REGISTER OF ACTIONS**CASE No. 19-JSC31-01153

Arthur C Solomon vs Davita

§
§
§
§
§Case Type: **Small Claims**Date Filed: **04/05/2019**Location: **JP3****PARTY INFORMATION**

		Attorneys
Defendant	Davita Littleton, CO 80120	
Plaintiff or Petitioner	Solomon, Arthur C Weston Lakes, TX 77441	

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS	
04/05/2019	Case Filed (open event)	
04/05/2019	Citation	
04/05/2019	Civil Citation Service	
	Davita	Unserved
04/05/2019	Remarks	
	PAID WITH A CC	
04/19/2019	Answer/Response	
	Defendant's Answer and Defenses to Plaintiff's Statement of Claim	

FINANCIAL INFORMATION

	Defendant Davita		
	Total Financial Assessment		2.00
	Total Payments and Credits		2.00
	Balance Due as of 05/07/2019		0.00
04/22/2019	Transaction Assessment		2.00
04/22/2019	E-filing	Receipt # 31-160645	Davita (2.00)
	Plaintiff or Petitioner Solomon, Arthur C		
	Total Financial Assessment		57.95
	Total Payments and Credits		57.95
	Balance Due as of 05/07/2019		0.00
04/05/2019	Transaction Assessment		51.00
04/05/2019	Transaction Assessment		6.95
04/08/2019	Online Payment	Receipt # 31-159839	Solomon, Arthur C (57.95)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ARTHUR C. SOLOMON,

Plaintiff,

V.

DAVITA, INC.,

Defendant.

CIVIL ACTION NO. 4:19-CV-1680

INDEX OF MATTERS BEING FILED

Pursuant to Local Rule 81, Defendant DaVita Inc., submits this Index of Matters Being Filed with its Notice of Removal:

1. Exhibit A – (1) all executed process in the case; (2) all pleadings asserting causes of action and Answer; (3) the state court docket sheet; (4) an index of matters being filed; and (5) a list of all counsel of record, including addresses, telephone numbers, and parties represented.
2. Exhibit B – Defendant’s Notice of Removal, filed in the Justice Court, Precinct 3, Fort Bend County, Texas.

38194251.1
020813.000358

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ARTHUR C. SOLOMON,

Plaintiff,

v.

DAVITA, INC.,

Defendant.

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CIVIL ACTION NO. 4:19-CV-1680

LIST OF ALL COUNSEL OF RECORD

PLAINTIFF – PRO SE

ARTHUR C. SOLOMON

32819 Wesleyan Court

Weston Lakes, Texas 77441

Telephone: 817.659.6006

Email: artsolomon530@gmail.com

COUNSEL FOR DEFENDANT

DAVITA, INC.

Tiffany Cox Stacy

State Bar No. 24050734

Fed. I.D. No. 828425

Email: Tiffany.Cox@ogletree.com

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

2700 Weston Centre

112 East Pecan Street

San Antonio, TX 78205

Telephone: 210.354.1300

Fax: 210.277.2702

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020813.000358

EXHIBIT B

CAUSE NO. 19-JSC31-01153

ARTHUR C. SOLOMON,

Plaintiff,

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DAVITA, INC.,

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§ IN THE JUSTICE COURT

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§ PRECINCT 3

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§ FORT BEND COUNTY, TEXAS

DEFENDANT'S NOTICE OF REMOVAL

Please take notice that Defendant DaVita, Inc. has filed a Notice of Removal of this action with the United States District Court for the Southern District of Texas – Houston Division. A copy of the Notice of Removal filed in the United States District Court is attached hereto as Exhibit A.

Respectfully submitted,

/s/ Tiffany Cox Stacy

Tiffany Cox Stacy

Texas State Bar No. 24050734

OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.

tiffany.cox@ogletree.com

2700 Weston Centre

112 East Pecan Street

San Antonio, TX 78205

210-354-1300 (phone)

210-277-2702 (fax)

ATTORNEYS FOR DEFENDANT
DAVITA, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2019, a true and correct copy of the foregoing document was served by certified mail, return receipt requested, on the following:

Arthur C. Solomon
32819 Wesleyan Court
Weston Lakes, Texas 77441

/s/ Tiffany Cox Stacy
Tiffany Cox Stacy

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